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सं. 13] नई दिल्ली, जून 22—जून 28, 2014, शनिवार/आषाढ़ 1—आषाढ़ 7, 1936
No. 13] NEW DELHI, JUNE 22—JUNE 28, 2014, SATURDAY/ASADHA 1—ASADHA 7, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके ।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 24 जून, 2014

आ.अ. 18.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2009 की निर्वाचन अर्जी संख्या 1 में इलाहाबाद उच्च न्यायालय के तारीख 20 दिसम्बर, 2013 के निर्णय को एतद्द्वारा प्रकाशित करता है ।

निर्णय अधिसूचना के अंग्रेजी भाग में छपा है ।

[सं. 82/उ.प्र.-लो.स./1/2009(इला.)]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 24th June, 2014

O.N. 18.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment dated 20th December, 2013 of the High Court of Judicature at Allahabad in Election Petition No. 1 of 2009.

2465 GI/2014

IN THE HIGH COURT OF JUDICATURE AT
ALLAHABAD

ELECTION PETITION No. 1 OF 2009
(Under Section 80, 80-A/81 of the Representation of
People Act, 1951)

DISTRICT: ALLAHABAD

CHANDRA NARAYAN TRIPATHI @ CHANDU
TRIPATHI

S/o Late Surya Narayan Tripathi,
Presently residing at H.No. 64/48, South Road,
Nawab Yusuf Road, Civil Lines, Allahabad.

... ELECTION PETITIONER

VERSUS

KAPIL MUNI KARWARIYA

S/o Late Vashistha Narayan Karwariya,
R/o House No. 1203, Ahiyapur, Malviya Nagar,
Allahabad

... RESPONDENT

Reserved on 09.10.2013
Delivered on 20.12.2013

Court No.-34

Case :- ELECTION PETITION No. - 1 of 2009

Petitioner :- Chandra Narain Tripathi

Respondent :- Kapil Muni Karwariya

Counsel for Petitioner :- In Person, Narendra Kumar Pandey, Smt. Sudha Pandey

Counsel for Respondent :- B.N. Singh, K.N.Tripathi, K.R. Singh, Ravi Shankar Prasad, S.C. Dwivedi

Hon'ble Sudhir Agarwal, J.

1. This election petition under Sections 80, 80-A and 81 of the Representation of People Act, 1951 (hereinafter referred to as the "Act, 1951") has come up at the instance of one of the candidates, Chandra Narayan Tripathi, who is aggrieved by order dated 06.04.2009, whereby the Returning Officer (hereinafter referred to as the "RO") has rejected his nomination, as a result whereof Sri Chandra Narayan Tripathi, the election-petitioner (hereinafter referred to as the "petitioner") could not contest election of 51- Phulpur Parliamentary Constituency of District Allahabad (hereinafter referred to as the "51-PPC") wherein the respondent- Kapil Muni Karwariya, ultimately returned elected. The petitioner, therefore, has assailed declaration of respondent as elected member of Parliament from 51-PPC and has sought above election to be declared null and void.

2. The case set up by petitioner in the election petition, in brief, is as under.

3. The Election Commission of India (hereinafter referred to as the "ECI") vide notification dated 02.03.2009, issued under Section, 14 of Act, 1951, called upon the Parliamentary Constituencies of India to elect their members so as to constitute 15th Lok Sabha. The election was to be held in five phases, as under:

First phase	-	16.04.2009
Second phase	-	23.04.2009
Third phase	-	30.04.2009
Fourth phase	-	07.05.2009
Fifth phase	-	13.05.2009
Date of counting votes	-	16.05.2009

4. The District Allahabad had two Parliamentary Constituencies, i.e., 51-PPC and another one is 52-Parliamentary Constituency, Allahabad.

5. 51-PPC consisted of five Legislative Assembly Constituencies, i.e., 254-Phaphamau; 255-Soraon; 256-Phulpur; 261-Allahabad West; and, 262-Allahabad

North. The then District Magistrate, Sri Rajeev Agrawal was appointed RO for 51-PPC and Sri Triloki Singh, Sub-Divisional Magistrate, Soraon was appointed Assistant Returning Officer (hereinafter referred to as the "ARO"). The RO notified, vide notification dated 28.03.2009, election programme for 51-PPC, as under:

Date of Nomination	-	28.03.2009 to 04.04.2009 (11.00 am to 03.00 pm)
Date of Scrutiny	-	06.04.2009 (11.00 am to 03.00 pm)
Date of Withdrawal of Nomination paper	-	08.04.2009 (11.00 am to 03.00 pm)
Date of Polling	-	16.04.2009 (07.00 am to 05.00 pm)
Date of counting and declaration of result	-	16.05.2009

6. The petitioner filed his nomination papers on 04.04.2009. The respondent filed two sets of nomination papers on 31.03.2009 and another two sets of nomination papers on 04.04.2009.

7. Besides above two, 33 other candidates submitted their nominations and they are, (1) Shailendra Kumar, (2) Virendra Pal Singh, (3) Shyama Charan Gupta, (4) Karan Singh Patel, (5) Milam Mukherji, (6) Pradeep Kumar Srivastava, (7) Samar Bahadur Sharma, (8) Sanjeev Kumar, (9) Munishwar Singh, (10) Radhika Pal, (11) Qumar Sayeed, (12) Dr. Neeraj, (13) Satish Kumar, (14) Vijay Kumar, (15) Ram Janam, (16) Lallan Singh, (17) Chandrajeet, (18) Ram Shanker, (19) Bharat Lal, (20) Israr Ulla, (21) Gyanendra, (22) Ashok, (23) Janardan, (24) Sone Lal Patel, (25) Krishna Patel, (26) Niyaz Ahmad, (27) Dharmraj Singh Patel, (28) Ramesh Chandra Sahu, (29) Uday Singh, (30) Radhey Shyam, (31) Krishna Kumar, (32) Uma Shanker and (33) Devendra Pratap Singh.

8. The petitioner claims to be a candidate set up by Krantikari Jai Hind Sena Party while respondent was an authorised candidate of Bahujan Samaj Party. The RO rejected nominations of nine candidates including that of petitioner on 06.04.2009. Two other candidates, Sri Qumar Saeed son of Mohammad Safi and Smt. Krishna Patel wife of Sone Lal Patel withdrew their nomination. The RO issued list of contesting candidates in Form No. 7A and allotted symbols on 08.04.2009 to remaining 24 candidates including respondent. After the polling held on 16.04.2009, result was declared on 16.05.2009 wherein respondent returned elected.

9. The petitioner has assailed election of respondent on the ground that nomination of petitioner was cancelled/rejected illegally. Detailing the grounds in furtherance of above, it is said that, petitioner is resident of Mohalla Garulpar, District Deoria which forms part of 337-Deoria Legislative Assembly Constituency in District Deoria. He

is enrolled as an elector from 337-Deoria Legislative Assembly Constituency. The name of petitioner is recorded at serial No. 709, Part-208, Electoral Roll of 337-Deoria Legislative Assembly Constituency. Petitioner, after his initial primary education at Deoria came to Allahabad to join law course and in 1983-84 was elected as General Secretary of Allahabad University Students Union. Since 2006, State of U.P. is functioning under the Chief Ministership of Miss Mayawati, a leader of Bahujan Samaj Party. A few days back, i.e., before notification of General Election-2009, the then Chief Minister, on 02.03.2009 changed top district administration by posting new District Magistrate, Senior Superintendent of Police and Superintendent of Police, of her own choice. It is in furtherance thereof, Sri Rajeev Agrawal came to be posted as District Magistrate, Allahabad and one Sri B.P. Tripathi as Senior Superintendent of Police/D.I.G. Allahabad.

10. The District Magistrate, Allahabad who was also appointed as RO, worked as an agent of ruling political party. In a preplanned way, he rejected nine nomination papers, illegally, to ensure victory of the candidate of ruling party. Petitioner's nomination was rejected due to non-application of mind, misreading and misinterpretation of Sections 33(4) and 36 of Act, 1951. Petitioner's nomination was rejected so as to exclude a strong candidate from Brahmin community so that the things may become easier for respondent, the sole valid candidate of Brahmin community remained in fray.

11. The petitioner filed nomination on 04.04.2009, duly filled in all respect. Since the party to which petitioner belongs was an unrecognised unregistered party, hence by virtue of first proviso of Section 33(1) by Act, 1951, the nomination of petitioner needed to be subscribed by 10 proposers, who are electors of 51-PPC. The petitioner's nomination was complete in all respect, signed by candidate and his proposers. It was presented at about 1.57 pm on 04.04.2009. The competent authority administered oath to petitioner at about 2.00 pm, on the same day, after presenting nomination paper. Thereafter the ARO issued receipt to petitioner in token of receiving nomination paper. He also informed petitioner that the scrutiny of nomination will be held on 06.04.2009 at 11.00 pm in the court of District Collector/District Magistrate, Allahabad. The ten proposers who signed petitioner's nomination were:

Sl. No.	Name and address	Position in electoral roll
1.	Ram Narayan s/o Surya Deen Dwivedi, r/o Village Deoria, Post Hanumanganj, District Allahabad	Sl. No. 381, Part No. 105, Electoral Roll 256-Phulpur Legislative Assembly Constituency
2.	Pramod Kumar s/o Shri Hira Lal, r/o House No. 1, Kala Danda, Allahabad	Sl. No. 3, Part No. 170, Electoral Roll 261-Allahabad West Legislative Assembly Constituency

Sl. No.	Name and address	Position in electoral roll
3.	Himansu s/o Sri Ramanand, r/o House No. 16, Clive Road, Allahabad	Sl. No. 602, Part No. 194, Electoral Roll 262-Allahabad North Legislative Assembly Constituency
4.	Bhuvneshwar Dwivedi, s/o Sri Ram Sajeevan, r/o House No. 3- G/2, Shivkuti, Allahabad	Sl. No. 144, Part No. 37, Electoral Roll 262-Allahabad North Legislative Assembly Constituency
5.	Onkar Nath Tripathi, s/o Sri Brij Nath Tripathi, r/o House No. 803/28-B/A, Allahpur Mohile Nagar, Allahabad	Sl. No. 702, Part No. 276, Electoral Roll 262-Allahabad North Legislative Assembly Constituency
6.	Rajesh Kumar, s/o Sri Onkar Nath Tripathi, r/o House No. 803/28-B/1, Allahpur Mohile Nagar, Allahabad	Sl. No. 706, Part No. 276, Electoral Roll 262-Allahabad North Legislative Assembly Constituency
7.	Rakesh Kumar, s/o Sri Paras Nath, r/o House No. 8/3, Muir Road, Allahabad	Sl. No. 873, Part No. 209, Electoral Roll 262-Allahabad North Legislative Assembly Constituency
8.	Tarun, s/o Sri Shashikant, r/o House No. 767/28-B/1, Allahpur Mohile Nagar, Allahabad	Sl. No. 563, Part No. 276, Electoral Roll 262-Allahabad North Legislative Assembly Constituency
9.	Ashok Kumar, s/o Sri Ram Kumar, r/o House No. 763/28-B/1, Allahpur Mohile Nagar, Allahabad	Sl. No. 533, Part No. 276, Electoral Roll 262-Allahabad North Legislative Assembly Constituency
10.	Akhilesh Kumar Dubey, s/o Sri Rang Nath Dubey, r/o House No. 28-B/118-A, Allahpur Mohile Nagar, Allahabad	Sl. No. 133, Part No. 276, Electoral Roll 262-Allahabad North Legislative Assembly Constituency

12. When the nomination was submitted, petitioner was administered oath and receipt was issued, till that time, neither the RO nor ARO pointed out any defect in the contents and details given in nomination paper with respect to proposers or their position in respective electoral roll. On 06.04.2009 the petitioner appeared before RO at 11.00 am. The nominations were scrutinized. The petitioner's nomination was at serial No. 46 and it was taken up by ARO at 1.00 pm on 06.04.2009. He handed over it to RO for scrutiny. The RO told petitioner that part number of electoral roll of proposers no. 5, 6, 8, 9 and 10 is wrongly mentioned since none of them was found in the electoral roll of part No. 275. He also directed petitioner to come after one hour so that in the meantime he and ARO may check the names of proposers in electoral

roll. Though RO and ARO had enough material to find out correct position in electoral roll but they wilfully and deliberately failed to undergo such exercise. At about 2.00 pm the nomination paper of petitioner was again taken up by RO. The petitioner orally pointed out that due to mistake, part number of electoral roll 275 is mentioned and in fact it ought to be part No. 276. He also stated that he was supplied, by officials of District Election Officer, first page of part No. 275 of electoral roll 262-Allahabad North Assembly Constituency while the subsequent pages were the extract of electoral roll of part No. 276 in respect of proposers No. 5, 6, 8, 9 and 10 and, hence, by mistake part number was wrongly mentioned as 275. He also gave a written representation in his own handwriting, at about 2.00 pm on 06.04.2009, to RO, stating that the entries in nomination papers were made, founded on the information given by officials of District Election Office. In place of part No. 276 it was wrongly mentioned as 275, which is a mere clerical or technical error. Since all the aforesaid five proposers were residents of same area, i.e., Mohile Nagar, Allahpur, Allahabad, were attached to the same and one polling center. The petitioner also requested RO to verify/search out the name/number of polling center/stations since the list of polling centers/stations of 262-Allahabad North Assembly Constituency is available and placed with them. Thereupon there was a verbal hot exchange of words between petitioner and RO. Along with certain written representation, the petitioner also annexed the first page of extract of electoral roll part 275 along with relevant extract of part 276 in respect of proposers No. 5, 6, 8, 9 and 10 and requested RO, either to remove the aforesaid defect or correct the same. The RO though received written representation but refused to provide receipt thereof, alleging that he is busy in scrutiny of nominations of other candidates. Thereafter he passed order rejecting petitioner's nomination on 06.04.2009. The RO rejected nomination on technical and flimsy grounds and in violation of proviso to Section 33(4) of Act, 1951, read with para 9.4 of the handbook of Returning Officer 2009 which contains certain instructions for RO. The aforesaid rejection was in violation of principle of natural justice, i.e., without giving any opportunity to petitioner to rectify the mistake. Thereafter the petitioner sent a representation to Chief Election Commissioner through fax at about 10.20 pm on 06.04.2009 and approached Election Observer, handed over a representation to him. He met Election Observer at about 10.30 pm on 06.04.2009. The mistake, if any, was not of substantial nature and, therefore, nomination paper of petitioner could not have been rejected.

13. Contesting the petition, respondent has filed written statement stating that petitioner's nomination was not valid and hence rightly rejected by RO. The petitioner has no right to challenge respondent's election. Neither it is void nor otherwise illegal. The

petitioner was not a serious candidate to contest above election. Proposers No. 5, 6, 8, 9 and 10 were neither electors nor had any right to vote. They were not valid proposers in the eyes of law. If a candidate has not given correct particulars of proposers, it is not the responsibility of RO and ARO to go on a detailed investigation to find out, whether proposers are electors or not. Petitioner having not given correct particulars, his nomination was not valid in law and has rightly been rejected. The nomination was not filed in accordance with law. At the time of filing of nomination, the RO, while accepting the same, is only supposed to check, whether nomination is filled in all the columns and appended with all requisite documents. He is not under any duty, statutorily or otherwise, to look into correctness of entries/details given in the nomination paper or other documents. That is to be seen on the date of scrutiny and if the details and particulars are found incorrect, the nomination has to be rejected. Thus it has rightly been rejected by RO. The petitioner was not present before RO at the time of scrutiny of his nomination paper. The story of verbal exchange of words etc., set up by petitioner, is false. The petitioner deliberately and designedly filled up wrong part number of electoral roll relating to his proposers No. 5, 6, 8, 9 and 10, to ensure rejection of his nomination and in furtherance thereof he absented himself at the time of scrutiny of nomination. The defect in nomination paper was of substantial character and there is no question of its being permitted to be corrected.

14. By way of amendment, paragraphs No. 80-A to 80-I were added in the written statement. The same basically relate to one proposer, Pramod Kumar son of Heera Lal. As per pleadings in the election petition, name of Pramod Kumar was at Serial No. 3, Part 170 of Electoral Roll-261, Allahabad West Assembly Constituency. The petitioner had himself appended relevant extract of electoral roll of Part No. 170 for 270-Allahabad West Assembly Constituency, published in January, 2009 showing that entry relating to Sri Pramod Kumar contains an endorsement as "Vilopit" (Removed). It is thus pleaded that as per own case, set up by petitioner, one of the proposers, Pramod Kumar, was not an elector with the particulars as given by petitioner. In view thereof, there was no 10 valid proposers, hence nomination of petitioner, even otherwise, was defective in law, and stood rightly rejected. In other words, it cannot be said that his nomination was improperly rejected.

15. A replication has been filed by petitioner in reply to amended paragraphs of written statement. It is said that name of proposer No. 2, Pramod Kumar was not deleted up to the commencement of election and continued on record. The RO did not reject nomination on the ground of any defect with respect to proposer No. 2. The officials of Electoral Registration Officer, Allahabad and Assistant Electoral Registration Officer, Allahabad, including booth

level officer and the concerned Lekhpal of the area, at the instance and pressure of respondent, and in his collusion, subsequently, i.e., after the end of election, on the pretext of revision of electoral roll, in contravention of orders and direction of ECI, illegally, deleted name of proposer No. 2 from electoral roll of part No. 170, 261-Allahabad West Assembly and instead shifted it at serial No. 16, part No. 165 of electoral roll 261- Allahabad West Assembly Constituency.

16. From the respective pleadings of parties, following issues were framed vide Court's order dated 29.08.2011:

"1. Whether the nomination paper filed by the petitioner has been rejected improperly by the Returning Officer, as alleged in the election petition. If so its effect ?

2. Whether the alleged defects in the nomination paper filed by the petitioner were not of substantial character within the meaning of section 36 (4) of the Representation of the People Act 1951. If so its effect ?

3. Whether the alleged defects in the nomination paper filed by the petitioner were liable to be over-looked by the Returning Officer under the proviso to sub-section (4) of section 33 of the Representation of the People Act 1951 as alleged in the Election Petition ?

4. Whether the petitioner was entitled to an opportunity to rebut under the proviso to sub section (5) of section 36 of the Representation of the People Act 1951, the objections raised against his nomination as alleged in the Election Petition ?

5. Whether Mr. Pramod Kumar was not competent to act as a proposer for the petitioner on the grounds pleaded in the written statement. If so its effect ?

6. To what relief, if any, is the petitioner entitled ?"

17. Though several documents were brought on record by parties but the documents proved and marked exhibits are P1 to P19, in support of election petition, and R1 to R19, in support of defence. The details of documentary evidence, I shall discuss, as and when it is relevant.

18. The oral evidence which has come on record, constitutes statements of four petitioner's witnesses and three respondent's witnesses. The petitioner's witnesses are:

(1) Sunil Kumar Srivastava son of late Sri Anjani Prasad Srivastava, Senior Clerk, District Election Office, Allahabad- PW 1.

(2) Rama Shanker Singh son of Sri K.P. Singh- PW 2.

(3) Atiq Ahmad Siddiqui son of late Sri Abdul

Sharif, Officer on Special Duty in the Office of Chief Election Officer, U.P.-PW 3.

(4) The Election Petitioner himself, i.e., Chandra Narain Tripathi-PW 4.

19. On behalf of respondents, the following three witnesses examined are:

(1) Raj Karan Pandey, Assistant District Election Officer, Allahabad-DW 1.

(2) Krishna Kumar Yadav son of Sri Budhai Prasad Yadav- DW 2.

(3) Ch. Sayd Ahmad son of late Sri Shabbir Ahmad-DW 3."

20. After registration of this election petition, the Hon'ble Chief Justice initially nominated Hon. Shri Kant Tripathi, J. to try it. After His Lordship's retirement on 14.12.2011 it was nominated to Hon. Kalimullah Khan, J., then to Hon. V.P. Pathak, J., Hon. Sunil Hali, J., Hon. Mohd. Tahir, J. and then to this Court on 25.04.2013 and that is how I am seized with this matter.

21. I have heard Sri N.K. Pandey, Advocate for the petitioner and Sri K.N. Tripathi, Senior Advocate and Sri K.R. Singh, Advocate for respondent, at length.

22. From the pleadings and arguments advanced, the central issue, hovering around all the issues framed above, is, regarding alleged improper rejection of nomination of petitioner. If findings on this aspect go in his favour, it may cause serious prejudice to respondent, else there would be no other option but to dismiss this petition.

23. The two provisions which have been repeatedly referred, read and attempted to be explained, in the light of various precedents, are, Section 33(4) and 36(4) of Act, 1951. However, before discussing the above, it would be prudent to have a quick glance over the statutory scheme with regard to procedure of filing nomination, scrutiny and finalization.

24. The procedure for nomination of candidate is contained in Part V of Act 1951. Section 33 talks of the procedure, in respect of presentation of nomination form, and requirement for a valid nomination. Relevant extract, i.e., sub-section (1), (4), (5) and (6) reads as under:

"33. Presentation of nomination paper and requirements for a valid nomination. (1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the

constituency as proposer:

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to "ten per cent of the electors of the constituency or ten such electors, whichever is less, as proposers".

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination

papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency." (emphasis added)

25. Section 33-A requires a candidate to furnish certain further information, like his criminal antecedents etc. Section 33-B provides that an informations not required by the Act or Rules framed thereunder, no candidate shall be liable to disclose or furnish such information. Section 34 deals with deposit to be made by the candidate concerned before submitting his nomination. The above provision being not relevant for the purpose of this case, are being skipped hereat.

26. Section 35 talks of notice of nomination and time and place for scrutiny which has to be given by R.O. on receiving nomination paper. Section 36 talks of scrutiny of nomination. Both the provisions, (Sections 35 and 36), since have material bearing on the issue in question, are reproduced as under:

"35. Notice of nominations and the time and place for their scrutiny.- The returning officer shall, on receiving the nomination paper under sub-section (1) or, as the case may, be, sub-section (1-A) of section 33, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him, and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer." (emphasis added)

"36. Scrutiny of nominations. (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191,

Parts II of this Act, and Sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of Section 33 or Section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in clause (b) or clause (C) of sub-section (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of Section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time, being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting

the same have been recorded, the returning officer shall prepare a list of validly nominated Candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board." (emphasis added)

27. For conduct of election, Rules have also been framed i.e., "Conduct of Election Rules, 1961" (hereinafter referred to as "Rules, 1961").

28. Rule 2(1)(e) of Rules, 1961, defines "electoral roll", and 2(1)(f), defines "electoral roll number", and, read as under:

"(e) "electoral roll", in relation to an election by an assembly members, means the list maintained under Section 152 by the R.O. for that election;"

"(f) "electoral roll number" of a person means-

(i) the serial number of the entry in the electoral roll in respect of that person;

(ii) the serial number of the part of the electoral roll in which such entry occurs; and

(iii) the name of the constituency to which the electoral roll relates;"

29. Rule 2(1) (g) defines "Form" which reads as under:

"(g) "Form" means a Form appended to these rules and in respect of any election in a State, includes a translation thereof in any of the languages used for official purposes of the State;"

30. Rule 4 provides that every nomination paper presented under sub-section (1) of Section 33 shall be completed in such one of the Forms 2-A to 2-E, as may be appropriate. It also contains a proviso which reads as under:

"Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of Section 36."

31. The proposers signing a nomination form are supposed to give particulars like, name of the component assembly constituency, electoral roll number, Part No. of electoral roll, serial number in that part, full name, signature and date. For a Parliamentary Constituency, election nomination paper of an independent is required to be subscribed by ten proposers, who are electors of the constituency concerned, *vide* proviso to Section 33 (1) of Act, 1951.

32. In the present case, from a perusal of record, it is evident that in Part 2 the particulars of ten proposers in

column 1 to 5 were filled in as under :

Sl. No.	Number of	electoral roll of proposers		Full Name
	Name of component constituency	Electoral Roll Part No.	Serial No. in the part of electoral roll	
1	2	3	4	5
1.	256-Phulpur	105	381	Ram Narayan
2.	261-Allahabad West	170	3	Pramod Kumar
3.	262-Allahabad North	194	602	Himansu
4.	262-Allahabad North	37	144	Bhuvneshwar Dwivedi
5.	262-Allahabad North	275	702	Onkar Nath Tripathi
6.	262-Allahabad North	275	706	Rajesh Kumar
7.	262-Allahabad North	209	873	Rakesh Kumar
8.	262-Allahabad North	275	563	Tarun
9.	262-Allahabad North	275	533	Ashok Kumar
10.	262-Allahabad North	275	133	Akhilesh Kumar Deubey

33. Learned counsel for petitioner submitted that mere wrong mention or non-mention of some information in one or other column(s), meant for proposers, cannot be said to be a defect of substantial nature. The R.O. could have verified the above details, if some labour would have been put in by him going through electoral roll of the constituency concerned. For this reason alone, rejection of nomination form of petitioner is patently illegal and unjust. He submitted that neither certified copy of electoral roll was made available to him nor R.O. himself made such enquiry, himself, though he could have done, since copies of all electoral rolls were available with him, but having failed to perform his duty effectively, he was not justified in penalising petitioner by rejecting nomination form, that too, for technical error which was identifiable and rectifiable. Hence rejection of nomination of petitioner, being wholly illegal and contrary to procedure prescribed in the statute, is vitiated and is liable to be set aside.

34. Per contra, Sri K.N. Tripathi, learned Senior counsel appearing for respondent submitted that duty to correctly complete nomination form and submit with requisite information lies upon the candidate concerned. The R.O. is not supposed to engage in a meticulous

enquiry if candidate himself has not cared to furnish complete information or has given incorrect information, and has not attempted to rectify, even till the date of scrutiny. In the circumstances, the R.O. had no option but to reject such nomination form and therefore, he has not committed any error or illegality or otherwise in rejecting nomination of petitioner, finding the same as not fulfilling the requirement of first proviso to Section 33(4) of Act, 1951. Election petition is misconceived, having been filed to unnecessarily harass the elected candidate and therefore, liable to be dismissed with exemplary costs. It is contended that flaws and illegality committed in the nomination form were well within the knowledge of petitioner. He had chosen to drag the elected candidate into unnecessary litigation for which this Court should pass an order imposing exemplary costs, so also to give a message, that any person, like the petitioner, should not dare, to institute such frivolous and baseless litigation to harass an innocent person.

35. Having heard counsel for the parties and perusing the record, I, now proceed to adjudicate the issues formulated hereinabove. The issues No. 1 to 4 shall be taken collectively so as to find out whether nomination form of petitioner has been rejected illegally and, if so, whether it would render the result of election declaring the respondent elected, vitiated.

36. The statute lays down a very detailed procedure for filing of nomination papers for prospective candidates, aspiring to contest an election, and, quite minute details have been taken care of, by legislature. Simultaneously, this is also evident that the legislature has intended that there should not be any casual attempt to reject a nomination paper for tit bits or minor irregularity. The R.O. must look into the matter with sincere endeavour to ensure that a valid nomination is filed and taken on record giving genuine opportunity to candidate concerned to contest election.

37. Part-III deals with the notification of General Elections for State and Central both. As soon as notification is issued, calling upon a constituency to elect a member or members, the role of ECI commences. Immediately thereafter, the ECI is required to issue a notification in Official Gazette appointing various dates, namely, date for making nomination, date for scrutiny of nomination, date for withdrawal of candidature, date or dates on which poll shall, if necessary, be taken and date before which election shall be completed, as per requirement of Section 30 of Act 1951. Thereafter comes the role of R.O. concerned who is supposed to give public notice of intended election in the form and manner as prescribed, inviting nomination of candidates for such election and specify the place at which nomination papers are to be delivered. This is what required by Section 30(1). Section 32 talks of the candidate,

eligible to seek nomination, for election. Any person qualified to be chosen to fill the seat for which notification of election has been issued, may be nominated as a candidate for election to such a seat. Then comes the procedural part. I may summarize various steps as discerned from a cumulative reading of Sections 33, 33-A, 34, 35, 36 and the Rules, 1961.

38. Nomination papers shall be delivered to R.O. at the place specified in the notice issued under Section 31, either by the candidate himself or by his proposer(s). Various steps and requirements are:

- (i) Nomination paper has to be submitted on or before the date appointed under clause (a) of Section 30 i.e. last date for making nomination;
- (ii) time within which nomination paper can be delivered to the R.O. is 11 A.M. to 3 P.M. of each date;
- (iii) nomination paper must be in the prescribed form, complete in respect of all the entries, and signed by candidate as also proposer(s);
- (iv) as soon as nomination paper is presented before R.O. he shall satisfy himself about correctness of names and electoral roll number of candidate and his proposer(s) as entered in nomination paper vis-a-vis electoral roll;
- (v) R.O. if finds any clerical or printing error, inaccurate description or misnomer in regard to name of candidate or his proposer(s) or in regard to any place mentioned in electoral roll or nomination paper, he shall permit such misnomer, inaccurate description etc., to be corrected by the person presenting/delivering nomination paper to him;
- (vi) R.O. on receiving nomination paper, shall inform the person or persons, delivering the same, the date, time and place, fixed for scrutiny of nomination;
- (vii) Simultaneously, R.O. shall enter on nomination paper its serial number and, shall also sign, on the same date, and almost simultaneously, a certificate, stating the date on which nomination paper has been delivered to him;
- (viii) R.O. shall also cause to be affixed in some conspicuous place, in his office, a notice of nomination, containing description, similar to those contained in nomination paper, both of the candidate and of proposer(s).

Procedure to be observed on the date of scrutiny

39. The candidates, their election agents, one proposer of each candidate and any other person duly authorised in writing by each candidate may attend the place, fixed by

R.O. for scrutiny of nomination, at the place and time fixed by him. The R.O. shall give aforesaid persons, all reasonable facilities for examining nomination papers of all candidates, which, he was delivered within time and manner laid down in Section 33. R.O. shall himself examine nomination papers and decide all objections, made to any nomination. He can reject any nomination, if; (a) candidate is not qualified or is disqualified for being chosen to fill the seat for which nomination has been submitted; (b), if there is failure to comply Section 33 or Section 34; and (c) if signature of candidate or proposer(s) on nomination paper is not genuine.

40. If the candidate concerned has submitted more than one nomination papers and in one of such papers his nomination is found in order, his candidature shall not be rejected on any of the grounds of non-compliance of Sections 33, 34 or in respect of signatures. The R.O. shall not reject nomination paper for a defect which is not of a substantial character. Proceedings of scrutiny shall not be adjourned except with interrupted or obstructed by riot, or open violence or by causes beyond his control. R.O. shall endorse his decision of acceptance or rejection of nomination.

41. If a nomination paper is rejected, the R.O. shall also record brief statement of reasons in writing for such rejection. After nomination papers are scrutinized and decision accepting or rejecting the same is complete in respect of all the nomination papers, immediately thereafter R.O. shall prepare a list of validly nominated candidates and affix the same to his notice board.

42. From the above, it is evident that the legislature on the one hand has stressed upon observance and compliance of requirements of Sections 33 and 34 of Act, 1951, simultaneously, has not authorised the R.O. to reject nomination if the defect is not substantial one; and/or if there are some discrepancies like, misnomer, inaccurate description or clerical, technical or printing error in regard to name of candidate or his proposer or any other person or in regard to any place. These errors may be either in electoral roll, or in the nomination paper but they shall not authorise the R.O. to reject the nomination paper as such, and, he is required to allow the candidate to rectify/correct the errors and/or such error etc. shall be overlooked.

43. The contention of learned counsel for the petitioner in fact sharply harps upon the action of R.O. at the stage when nomination was filed and received by him. Referring to Section 33(4), Sri Pandey contended that once nomination paper is filed and the R.O. and A.R.O. had satisfied himself about the entries made in nomination form and the documents and thereafter administered oath and issued receipt in acknowledgement to the nomination form, it means that he has verified the correctness of all the entries made in nomination form and wrong mention of part number in respect of certain

proposers with regard to concerned electoral roll, therefore, would not construe a ground for rejection of his nomination.

44. To my mind, the argument has misread the requirement of Section 33(4). The stage of receiving nomination form is a kind of summary inquiry, i.e., whether all the details etc. had been filled in and the documents required are appended. With respect to name of electoral roll of candidates and their proposers entered in the nomination paper vis a vis electoral roll, the proviso says that if there is any misnomer or inaccuracy in description or clerical, technical or printing error, the same may be allowed to be corrected and wherever necessary, he may direct that such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overruled. This provision does not provide a situation where there is an incorrect mention of a fact with respect to electoral roll and there is no order for its overlooking. Whether at that very stage the RO can reject application or refuse to accept the nomination or he must make an endorsement in the nomination or elsewhere about such defect and what has transpired before him at the time of receiving nomination paper is not provided in Section 33(4).

45. Be that as it may, this Court has to consider this aspect in the light of judicial precedents holding field and binding on this Court. I will also have to make a distinction between a substantial defect and a clerical, technical or printing error or inaccurate description. In one way, it can be said that defect, if not substantial one, it would be a technical or clerical defect, therefore, if it can be ascertained as to what a substantial defect is, it would be easier to determine rest of the aspects. What is, therefore, necessary is to decide first meaning of phrase "defect not substantial one".

46. Both the sides have placed a catena of authorities and I would, however, discuss only those which would be helpful for this Court for adjudication of aforesaid aspect.

47. A Constitution Bench in Karnail Singh Vs. Election Tribunal, Hissar, and others 1954 ELR (Vol-X) 189=AIR 1954 SC 207 considered, whether omission to state Part of electoral roll in which candidate's name appeared, was a fatal defect or not. The Court said, if there was no difficulty in identifying the candidate and the candidate himself pointed out to the R.O. the entry of his name in the electoral roll, defect in such a case must not be taken to be fatal but it was a technical one and rejection of nomination paper for this very reason was improper.

48. The purpose of mentioning of sub-division in electoral roll in which serial number occurs is for assistance of R.O. and to facilitate identification of proposer etc. so that no time is wasted in ascertaining whether the proposer is a person qualified to act as such, and there is no doubt

about identity of proposer or his capacity to act as proposer. A mere omission of a small detail in his description in nomination paper ought not affect the matter.

49. In Ram Awadhesh Singh Vs. Smt. Sumitra Devi and others AIR 1972 SC 580, Two-Judge's Bench of Supreme Court considered whether misdescription as to electoral roll and electoral roll number would constitute a material defect, justifying rejection of nomination paper. The Court observed that so far as the candidate is concerned, he was admittedly qualified to be nominated for election. The only thing said against, is that nomination paper was not properly filled in. Referring to Section 33(4) of Act 1951 the Court said:

"... a duty is imposed on the Returning Officer by sub-s.(4) of S. 33 to look into the nomination paper when it is presented and to satisfy himself that the names and the electoral roll numbers of the candidate and that of the proposer as entered in the nomination paper are the same as those entered in the electoral roll."

50. The Court also observed, if the Returning Officer would have looked into nomination paper, he could not have asked the candidate either to correct the mistake or to file a fresh nomination. Commenting upon the implication of Section 33(4) the Court said:

"But the implication of Section 33(4) is that a wrong entry in a nomination paper as regards the name of the candidate or the proposer or their electoral roll numbers is not a matter of substantial importance. That is why the legislature requires the Returning Officer to look into them and if there are any mistakes to get them corrected. What is of importance in an election is that the candidate should possess all the prescribed qualifications and that he should not have incurred any of the disqualifications mentioned either in the Constitution or in the Act. The other information required to be given in the nomination paper is only to satisfy the Returning Officer that the candidate possesses the prescribed qualification and that he is not otherwise disqualified. In other words those informations relate to the proof of the required qualifications."

51. It went further by observing that legislature itself has made distinction between acceptance of nomination and rejection. Whenever a nomination has to be rejected, RO is under statutory duty to give reasons in writing, though there is no such requirement for accepting a nomination. In para 15 of judgment the Court said:

"From a combined reading of Ss. 33 and 36, it is clear that a mis-description as to electoral roll number of the candidate or of the proposer in the nomination paper is not to be considered as a material defect in the nomination paper."

52. In *Rangilal Choudhury Vs. Dahu Sao* AIR 1962 SC 1248, a candidate mentioned the name of constituency as Bihar instead of Dhanbad. The Court held that it is not a mistake justifying rejection of nomination and after referring to Section 33(4) and 36(2)(b) and (4) the Court said.

"The result of these provisions is that the proposer and the candidate are expected to file the nomination papers complete in all respects in accordance with the prescribed form; but even if there is some defect in the nomination paper in regard to either the names or the electoral roll numbers, it is the duty of the returning officer to satisfy himself at the time of the presentation of the nomination paper about them and if necessary to allow them to be corrected, in order to bring them into conformity with the corresponding entries in the electoral roll. Thereafter on scrutiny the returning officer has the power to reject the nomination paper on the ground of failure to comply with any of the provisions of S.33 subject however to this that no nomination paper shall be rejected on the ground of any defect which is not of substantial character."

53. In *Ram Awadhesh Singh Vs. Smt. Sumitra* (supra) the Court also observed in para 19 of the judgment that the very fact that law requires the RO to look into nomination paper, when filed and get any mistake regarding the name or electoral number of the candidate or his proposer corrected, shows that the mistake regarding them is not a material defect.

54. In *Brijendralal Gupta Vs. Jwalaprasad* AIR 1960 SC 1049 the Court said that the word 'defect' in Section 36(4), included an omission to satisfy the details prescribed in the nomination.

55. A three Judge Bench of Apex Court in *Rakesh Kumar Vs. Sunil Kumar* AIR 1999 SC 935=(1999) 2 SCC 489 again considered the scope of Section 36(5) read with Section 33 of Act 1951 and held that the RO has been vested with discretion to fix time to enable a candidate to rebut an objection to the validity of a nomination paper. Such a discretion has to be fairly and judicially exercised. It was imperative upon him to give opportunity to the candidate to meet the said objection. If there is a failure to exercise his jurisdiction to postpone the decision as to validity of the nomination paper of the candidate concerned, despite he had sought time to meet the objection, it would amount to invalid rejection of nomination. The Court said in para 21 as under:

"The Returning Officer is not expected to reject a nomination paper, without giving an opportunity to the candidate or his representative present at the time of scrutiny to meet an objection, capable of being met, particularly where such an opportunity is

sought for by the candidate or his representative and no one present on behalf of the other candidates had opposed the claim made by the respondent."

56. In *Ram Bhual Vs. Ambika Singh* 2005 (12) SCC 121 in para 6, the kind of irregularity in the nomination paper has been noticed by the Court which reads as under:

"It is clear that the rejection of the nomination of PW 2 by the Returning Officer was only on the ground that out of the ten proposers, the ninth proposer Sant Lal, was described as the voter at Serial No. 392 in Part 91 of the voters' List. It is also clear and it is not disputed, that the name of Sant Lal is actually included in the voters' list, but at Serial No. 352 in Part 91 of the voters' list. It is also clear that both Serial No. 352 and Serial No. 392 of Part 91, are printed on the same page of the voters' list. Therefore, it required no detailed search by the Returning Officer to find out or to satisfy himself that Sant Lal, the proposer, was a voter in that constituency."

57. In para 8 of the judgment the Court said:

"It is clear from Section 36(4) of the Act that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character, Section 33(4) of the Act provides that on the presentation of a nomination paper, the Returning Officer has to satisfy himself that the names and the electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll. The proviso thereto clearly provides that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place and in a case where there was an error in the nomination paper in regard to the description, he shall direct that the same be corrected and he could even overlook such errors. It is in the context of the proviso to Section 33(4), that the case set up by the appellant of Sita Ram drawing the attention of the Returning Officer to the defect being only an error in the serial number and that Sant Lal, the ninth proposer, was actually at Serial No. 352 on the same page of the voters' list assumes great significance. It is a minor defect which obviously should have been got corrected by the Returning

Officer even while accepting the nomination and certainly he could not have rejected the nomination on that ground in the light of Section 36 (4) of the Act.

58. The cases which may give rise to a ground for challenge an election under Section 100(1)(c) and 100(1)(d)(i), were considered by the Apex Court in *N.T. Veluswami Thevar v. G. Raja Nainar and Ors.* AIR 1959 SC 422 and the Court said:

"...Under Section 32 of the Act, any person may be nominated as a candidate for election if he is duly qualified under the provisions of the Constitution and the Act. Section 36(2) authorises the Returning Officer to reject any nomination paper on the ground that he is either not qualified, that is, under Sections 3 to 7 of the Act, or is disqualified under the provisions referred to therein. If there are no grounds for rejecting a nomination paper under Section 36(2), then it has to be accepted, and the name of the candidate is to be included in a list. Vide Section 36(8). Then, we come to Section 100(1)(c) and Section 100(1)(d)(i), which provide a remedy to persons who are aggrieved by an order improperly rejecting or improperly accepting any nomination. In the context, it appears to us that the improper rejection or acceptance must have reference to Section 36(2), and that the rejection of a nomination paper of a candidate who is qualified to be chosen for election and who does not suffer from any of the disqualifications mentioned in Section 36(2) would be improper within Section 100(1)(c), and that, likewise, acceptance of a nomination paper of a candidate who is not qualified or who is disqualified will equally be improper under Section 100(1)(d)(i)."

59. The Apex Court noticed the instructions contained in Handbook of ECI in respect of what is required to be done by RO while nomination paper is to be scrutinized and in para 29 of the judgment in *Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite-Patil* AIR 2009 SC 2975 the Court said in para 29 as under:

"29. While exercising his quasi-judicial power, in terms of the provisions of the Act, it was incumbent upon the Returning Officer to follow the instructions contained in the Handbook. It provides for:

- (i) opportunity to be given to candidate to rebut the objections by placing sufficient materials on record;
- (ii) A presumption of validity of such nomination paper."

60. It cannot be disputed that the instructions contained in the Handbook of ECI are binding being statutory in nature as held in *Rakesh Kumar Vs. Sunil Kumar* (Supra) reiterated in *Uttamrao Shivdas Jankar* (Supra) (vide para

30 of the judgment). The Court also observed that with respect to correctness of nomination paper there is presumption of correctness and that too, being statutory in nature. In paragraph 35 of the judgment in *Uttamrao Shivdas Jankar* (supra) the Court said:

"35. The presumption of correctness of the nomination paper being statutory in nature, as intention of the Parliament as also the Election Commission was that even if somebody had filed an improper nomination, but for which he can be given benefit of doubt being a possible subject matter of an election petition...."

61. There are some authorities of the Apex Court which have been relied by respondents and it would be appropriate to discuss the same also so as to examine the facts of the present case in the light of exposition of law in all the authorities of Supreme Court to find out whether rejection of nomination of petitioner is valid, just, legal or not.

62. In *Rattan Anmol Singh and Another Vs. Atma Ram and others* AIR 1954 SC 510 the question up for consideration before the Apex Court was what is the meaning of word 'subscribed' in Section 33(1) and what is its effect on nomination paper. The Court observed that 'subscribe' means 'signing'. In para 12 of the judgment the Court said:

"It is true the word "subscribe" is not defined but it is equally clear, when the Act is read as a whole along with the form in the second schedule, that "subscribe" can only be used in the sense of making a signature and as the Act tells us quite clearly how the different types of "signature" are to be made, we are bound to give effect to it. In the case of a person who is unable to write his name his "signature" must be authenticated in "such manner as may be prescribed." The prescribed manner is to be found in rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951."

63. Then in para 13, the Court said that nomination papers having not been "signed" by the proposers and seconders in the usual way by writing their names, and as their marks were not attested it would lead to an inference that there are no valid signatures either of proposer or seconder in any nomination paper and, therefore, RO would be bound to reject it under Section 36(2) (d) unless he could and should have taken resort to Section 36(4) of Act 1951. This Court considered whether the aforesaid error is a mere technical or substantial and held:

"In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same footing as the

"subscribing" required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The "satisfaction" of the Returning Officer which the rules require is not, in our opinion, any the less important and imperative."

64. Then in para 15 of the judgment it was held that attestation and satisfaction etc. is all an exercise to be taken before scrutiny and the RO cannot permit any rectification at the stage of scrutiny. In para 15 of the judgment the Court said:

"....attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been

"any failure to comply with any of the provisions of section 33....."

The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is. If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right."

65. In *Bhogendra Jha Vs. Manoj Kumar Jha* AIR 1996 SC 2099, a three Judge Bench of the Apex Court considered as to what is a defect of substantial character. The Court referred to its decision in *Rafiq Khan Vs. Laxmi Narayan Sharma* (C.A. No. 6478 of 1995 decided on 14.3.1996) and observed as under:

" Unless the defect is one which can be per se noticed and corrected at the stage of Section 33(4) or later at the stage of Section 36(4) without the need to refer to various other documents the same cannot be said to be of a non-substantial character. In the instant case also the defect as to the number could have been said to be not of a substantial character if the appellant had shown that the name of the proposer appeared on the very same sheet at serial number 138 instead of 136 i.e. only two steps away. In that case one can say that the Returning Officer could have verified the same if he had exercised due diligence. In such a situation even if the appellant had his proposer absent the court could have taken the view that the defect was not of a substantial nature. But the defect cannot be noticed unless the Returning Officer is required to sift through various other

documents or the voters list or is required to undertake an enquiry as to whether the proposer's name appears anywhere else in the voters list. The defect may not be one capable of being cured without the assistance of the candidate or his proposer and in such a situation he would be justified in rejecting the nomination paper."

66. The exercise which could have been undertaken by RO under Section 36(4) has further been elaborated in paragraphs 7 and 8 of the judgment observing:

"Under Section 36(4) of the Act, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Under Section 36(1), the Returning Officer has the power to conduct an enquiry. It is settled law that it is a summary enquiry. When the Returning Officer scrutinises the nomination paper, the parties or the nominees are required to be present and if they seek liberty to place the necessary material, the Returning Officer is enjoined to adjourn the case to the next day. In case they are able to place the necessary material and satisfy the Returning Officer of the correctness of the enrolment as a candidate or the address of the nominee, the Returning Officer would consider the same. But he is not expected to sift the evidence and find the placement in the electoral roll, the name and particular of the nominee." (para-7)

" In this case, PWs 4 and 6 who were the candidates and had filed their nominations, though admittedly were present, did not ask for an opportunity nor attempted to satisfy the Returning Officer as to the correctness of the particulars furnished by them in the nomination papers of their proposers. Therefore, the Returning Officer was not expected to make a roving enquiry to find out whether the names of the proposers found place in the electoral roll. It is the duty of the candidate/proposer to satisfy the Returning Officer."

67. In an earlier decision similar observations were made i.e. *Brij Mohan Vs. Sat Pal* AIR 1985 SC 847. In para 20 of the judgment the Court said:

".....The candidate and the proposer are always expected to go fully prepared to meet any objection that may be raised by any candidate or even by the Returning Officer himself suo motu at the time of the scrutiny and they cannot be expected to go any the less prepared merely because the Returning Officer had received the nomination paper without raising any objection. It is at the time of scrutiny which is done in the presence of all concerned that the nomination papers come up for more detailed consideration at the hands of the Returning Officer against whom there is no estoppel in regard to the statutory duty of scrutiny"

68. In para 22 of the judgment the Court also said that RO is not expected to make a roving inquiry and has also to find out himself correct part number of the electoral roll.

69. In *Hira Singh Pal Vs Madan Lal* AIR 1968 SC 1179 the Court observed:

"As mentioned earlier, the errors found in the nomination papers are purely clerical errors. The Returning Officer had the duty to scrutinise the nomination papers when they were presented for finding out whether there were any clerical mistakes in the same. Under that provision he was required to find out whether the names of the candidates as well as their proposers and seconders were correctly mentioned in the nomination papers. He was also required to see whether their place in the electoral roll was correctly mentioned in the nomination papers. Evidently the Returning Officer failed in his duty. Further, when he scrutinised the nomination papers on January 21, 1967, he had before him all the required information. It may be that while scrutinising the first nomination paper (marked as No. 5) he had no material before him to find out whether the proposer of the candidate was really an elector in the constituency or not; but when he came to the second nomination paper where the proposer's name as well as his place in the electoral roll is correctly mentioned, it was improper on his part to have rejected that nomination paper. It is true that in that nomination paper, it had been mentioned that the candidate's name is found at serial No. 504 of part 2 of 9-Arki Assembly Constituency, though in fact it is found at serial No. 504 in part 12 of that constituency; but from the first nomination paper, the Returning Officer could have easily found out the correct part of the electoral roll. All the required information was before him. Obviously he rejected the nomination papers for the reason that the respondent was only a dummy candidate but that was not a matter for him to decide. If he was a dummy candidate there was occasion for him to withdraw his candidature after the scrutiny of the nomination papers. Therefore, it is quite clear that the respondent's nomination papers were improperly rejected. Such a rejection was impermissible under S. 36 and the same is a ground for setting aside the election under S. 100 of the Representation of the People Act."

70. In *Lila Krishan Vs. Mani Ram Godara and Ors* AIR 1985 SC 1073(1) the Apex Court in para 13 of the judgment said:

"13. Indisputably the insistence on disclosure of the serial number in the prescribed column against the proposer is for the purpose of identifying the proposer and ascertaining that he is competent to

propose. The scope of scrutiny is obviously to verify the contents of the nomination paper with a view to ascertaining whether the form is in order and what is required to be complied with by the election law has been duly complied with. This Court has repeatedly held that election proceedings are strict in nature and what is required to be performed in a particular manner has to be done as required and substantial compliance has ordinarily no place while dealing with the Act or the Rules made thereunder. That is why an exception has been made by inserting Sub-section (4) of Section 36 of the Act."

71. Further in para 14 of the judgment the Court said:

"To cast the obligation on the Returning Officer to look through the entire electoral roll of a particular part with a view to finding out the identity of the proposer is not the requirement of the law. To read that as an obligation is likely to lead to a unworkable position. The prescribed form of nomination (form 2-B) does not require to specify the name of the father of the proposer. That actually does not become necessary because once the name and the serial number in the voters' list are given, the cross-verification become easy and the father's name is available in the electoral roll. In one part of the electoral roll on the average names of about a thousand voters appear. Out of one thousand name it is quite possible that there would be more than one voter by the same names. Identification of any particular voter out of such list even when there are more voters with the same name is possible only with further reference to the father's name. To cast the obligation of verifying the entire electoral roll of a particular part is actually requiring the Returning Officer to do almost an impossible feat. It may not be so if there be a few candidates and it be a case of a by-election but when general election takes place and every Returning Officer is supposed to handle about seven or eight Assembly Constituencies and there may be instances of even 300 candidate contesting from one seat as it happened in the 1985 elections in the Belgaum Constituency of Karnataka State, the Returning Officer would find it physically impossible to grapple with such a situation. The election schedule is a very tight one. Under the law the day following the last day fixed for receipt of nomination papers is the date of scrutiny and soon thereafter follows the date fixed for withdrawal. If nomination papers are not scrutinised with due haste and promptness the election schedule may not be operative in the strict manner and dislocation are bound to follow."

72. Ultimately, in para 16 the Court said:

"But if the Returning Officer is not in a position to correlate and identify the proposer, the mistake

would indeed be not one which can be covered by Sub-section (4) of Section 36 of the Act. That view has been taken recently by this Court in *Brij Mohan v. Sat Pal* Civil Appeal No. 2650/84 disposed of on 13.3.85, to which two of us are parties. We endorse the ratio of the decision and applying the same, we agree with Mr. Sibal that the nomination papers were validly rejected in this case."

73. In the light of above statutory provisions as also the exposition of law discussed above, this Court has to examine after assessing evidence on record (documentary and oral) as also the pleadings of parties, whether nomination paper of petitioner has been rejected wrongfully so as to vitiate the election of returned candidate or that petitioner himself was negligent in filing his nomination paper by giving wrong details which justify its rejection by RO.

74. In fact issues no. 1, 2, 3 and 4 are all integrally connected and can be looked into collectively, and so, I proceed.

75. Learned counsel for petitioner has sought to place his case on a plain pedestal, arguing very humbly that here is case where a candidate intending to participate in Parliamentary election, committed a bona fide mistake of wrong mentioning of part number of electoral rolls relating to Proposers no. 5, 6, 8, 9 and 10 which could have been cured by RO by verifying part numbers from list of electors available with him, but, instead, RO adopted a short cut method of rejection of candidature so as to oust petitioner from the field of contest and this has vitiated the entire election. It is vehemently argued that error on the part of petitioner was not of substantial nature and RO, giving opportunity to petitioner, could have rectified the same or himself could have done so but instead of observing a way which could have enabled petitioner to contest election, RO, arbitrarily, has curtailed election journey of petitioner by rejecting candidature in the form of rejection of nomination paper.

76. Per contra, respondents' case is that petitioner failed to submit a nomination form, duly filled in, as required, and also did not avail opportunity to correct what was flawed by him. This is fortified from the fact that before this Court, at different stages, he has taken different stands. It, thus, cannot be said that error was unintentional clerical and if an opportunity would have been given, could have been cured by petitioner. Here is a flaw which the petitioner negligently or deliberately committed and took no step to rectify. It is also contended that nomination form was not filled as per the prescribed norms and in law such a nomination form has to be rejected and that is what has been done by RO.

77. In the light of the pleadings, evidence, contentions advanced and exposition of law discussed above, the issues in question have to be examined.

78. Case set up by petitioner in the election petition is that due to new delimitation of Assembly Constituencies, part number of electoral rolls got changed. New part numbers were given by Revising Authority of Electoral Roll. The revised Electoral Roll was published in respect of Assembly Constituencies of 51-PPC on 10th January, 2009 and electoral roll of every Assembly Constituency was made available on the website of ECI. Petitioner completed all the formalities as required under Section 33 of a valid nomination. It was duly signed by him and his Proposers. One set of nomination paper was presented on 4.4.2009 at about 1.57 P.M. before RO. Oath was administered at 2.00 PM and receipt was given by ARO on 4.4.2009 itself accepting petitioner's nomination papers informing that scrutiny shall be held on 6.4.2009 at 11.00 AM. The election-petitioner submitted all the documents, as required for a valid nomination, by annexing affidavits etc. He has annexed extracts of certified copies of electoral roll of part number 208 of 337 Deoria Legislative Assembly Constituency of 66- Deoria Parliamentary Constituency, since petitioner was enrolled as an elector therein. In para 58 of election petition, it is said that RO and ARO, having satisfied with the entries made in the nomination paper, issued receipt of nomination paper mentioning date, place and time of scrutiny of nomination form. Then in para 59 it is said that RO, since did not find out any defect in the nomination paper, petitioner believed that his nomination paper is complete in all respect. On 6.4.2009, petitioner appeared before RO at 11.00 AM where scrutiny of nomination paper took place from 11.00 AM to 3.00 PM. Petitioner's nomination paper was at Sl. No. 46 and it was taken up by ARO, Sri Triloki Singh, S.D.M. Soraon at about 1.00 PM on 6.4.2009 and handed over to RO for scrutiny. RO told petitioner that part number of electoral roll of Proposers number 5, 6, 8, 9 and 10 was mentioned wrongly and those Proposers did not find mention in the electoral roll of part number 275. He required the petitioner to come after an hour and in the meantime they were to check names of Proposers in electoral roll. After one hour, at about 2.00 PM petitioner's nomination paper was again taken up and he was orally pointed out that 275 was a wrong part number and the correct one is 276 and that error was committed since election- petitioner was supplied, by officials of District Election Office, first page of part number 275, electoral roll 262, while subsequent pages were the extract of electoral roll of part number 276 in respect of Proposers 5, 6, 8, 9, and 10 and by mistake it was wrongly mentioned in the nomination paper as part number 275 instead of 276. In para 67 petitioner further has stated that he submitted a representation to RO at about 2.00 PM on 6.4.2009, stating that entries in nomination paper were made on the basis of information supplied by officials of District Election Office. In place of part no. 276, it was wrongly mentioned as 275 which was a clerical or technical mistake. Since other things were correctly mentioned, part number was only a

mistake of clerical nature. In para 68 petitioner said that he also told RO, orally, on 6.4.2009, that Proposers no. 5, 6, 8, 9 and 10 are residents of Mohalla Allapur, Mohile Nagar and were attached with the Polling Centre/Station Sardar Patel Junior High School, Allahabad, Allahabad, hence their identity as electors can be easily searched out through name/ number of polling centre as the list of polling centre/stations of 262-Allahabad (North) Assembly Constituency was available with RO. It is said that a verbal hot exchange between petitioner and RO took place and RO said that he knew that petitioner is a practising Advocate and may get an order from High Court. In his representation dated 6.4.2009, which he allegedly submitted at about 2.00 PM, to RO, he requested that he may be permitted to remove defect or correct part numbers but RO neither gave this opportunity to cure the defect nor overlooked the same though it was not of substantial nature. RO though received representation on 6.4.2009 but declined to give any acknowledgement.

79. Though petitioner's assertion that he submitted a letter to RO on 6.4.2009 at about 2.00 PM has been seriously disputed by the respondents, but a copy thereof has been filed by petitioner which has been marked as Ex. P-7 and this has to be examined whether from the material on record, it can be determined as to what the petitioner is saying is correct, or not.

80. On 6.4.2009, petitioner claims to have submitted three letters to different authorities, one to RO at about 2.00 PM and rest two to Election Observer at 10.30 PM and Chief Election Commissioner, sent by post.

81. The first one is Ex. P-7 stated to have been given to RO. A perusal thereof shows that admitting his error in respect of part number of electoral roll of Proposers no. 5, 6, 8, 9 and 10, petitioner has said that it ought to be 276 instead of 275 and it is a clerical mistake. Therefore, to verify validity of Proposers, whether they are electors of concerned Parliamentary Constituency, RO may look into electoral roll of part number 276 and allow the error to be corrected or ignore the same. If this letter was actually submitted, to some extent it can be said that it has fortified the stand taken by petitioner in the election petition, but then there come two other letters, one of which he submitted, as per his own admission, after about eight and half hours, i.e., at 10.30 PM, to Election Observer and this document is Ex. P-8. Almost an identical copy of the aforesaid letter is the letter sent to Chief Election Officer on the same date by post which is Ex. P-9.

82. Here I find that petitioner has not said anything about his alleged representation given to RO or the incident of alleged hot exchange of words with RO etc. On the contrary, at 10.30 PM, on 6.4.2009, when Ex. P-8 was handed over by petitioner to Election Observer, this Court finds that at that time also, the petitioner had believed that

the information that part number he has filled in nomination paper is correct and Proposers no. 5, 6, 8, 9 and 10 must have found place in part number 275. It is nowhere mentioned in this entire letter that part number of Proposers 5, 6, 8, 9 and 10 was 276 and it was wrongly mentioned as 275 which he allegedly requested to be corrected before RO, in the earlier part of day. When in the night on 6.4.2009, petitioner was not aware as to what was correct part number of Electoral Roll regarding Proposers no. 5, 6, 8, 9 and 10, to believe that he gave correct information to RO through his representation dated 6.4.2009 at 2.00 PM is improbable and unbelievable.

83. Petitioner, very categorically, reiterated in his letter dated 6.4.2009 which is claimed to have been submitted to Election Observer at 10.30 PM that part number 275 of Electoral Roll of the aforesaid Proposers was correct and their names must find place therein. It would be appropriate to reproduce what he has said in the aforesaid letter:

“प्रस्थापकों के नाम भाग संख्या-275 में देख लें। वहीं पर होगा।”

English Translation by the Court:

"See names of Proposers in Part Number 275. Ought to be at that very place."

84. In the entire letter (Ex. P-8), there is not even a whisper that the aforesaid part number has been wrongly mentioned and correct part number is 276 to which, by way of Ex. P-7, petitioner attempted to show that he pointed out this fact to RO. I have no hesitation to record my finding that copy of letter dated 6.4.2009, Ex. P-7, which petitioner has placed before this Court, either does not represent the same copy which he allegedly submitted to RO, or he did not submit any such letter to RO, and, is making a wrong statement, or the document which he has submitted before this Court is subsequently improved and modified one. Ex. P-8 contains an endorsement dated 6.4.2009 at 10.30 PM and another letter in identical terms is addressed to Chief Election Commissioner, New Delhi, sent by post, which is Ex. P-9.

85. Therefore the documents P-8 and P-9 are more reliable and when I compare these two documents with Ex. P-7, I have no hesitation in holding that what has been stated in Ex. P-7 shows a subsequent manipulation or an afterthought, on the part of petitioner, who is the author thereof, to fortify his case and this is not the correct document. As a matter of fact, it cannot be believed that petitioner reiterated at 10.30 PM on 6.4.2009 that part number 275 of aforesaid Proposers was correct while he was already aware that this part number is incorrect and according to his own version, he had informed RO about correct part number as 276 at 2.00 PM, i.e., in the earlier part of the day. The two stands are mutually destructive, inconsistent and contrary, therefore it has to go against petitioner. Ex. P-1 to P-6 have been marked after the same

were proved by Sri Sunil Kumar Srivastava, PW-1 who was working as Senior Clerk in the District Election Office, Allahabad. He verified the aforesaid documents on the basis of official record. Ex. P-7, P-8 and P-9 were proved by election-petitioner, himself, during his own oral deposition as PW-4 and he himself has verified these three documents. Therefore, the veracity of aforesaid documents has to be examined by comparing and in the light of these very documents which show a diagonal opposite stand taken by petitioner himself, making his highly relied on document, i.e., Ex. P-7, untrustworthy.

86. Now, I come to further evidence which has come on record in the form of oral evidence. The basic oral evidence comes from oral deposition of PW-4, i.e., election petitioner himself. Here, in cross examination, he has said that he noted part number and serial number from the electoral roll of Proposers in the morning of 4.4.2009 itself on a piece of paper which he has not made part of evidence in these proceedings. He also admits that neither he submitted any application for certified copy of the electoral roll of the Allahabad nor deposited any fee therefor. He found out details of Proposers in the electoral roll himself on 4.4.2009 itself. He obtained certified copy of electoral roll in November' 2009, i.e. after filing this election petition. It is also admitted that in the letter dated 6.4.2009, which he has submitted to Election Observer, there was no mention about the representation which he allegedly submitted to RO in earlier part of the day. Regarding correct copy of electoral roll, in cross examination, he has made two contrary statements. On the one hand, he said that neither he submitted any application form nor deposited fee for obtaining copy of electoral roll but then, claims, that the same was made available to him by Election Office and he possessed it at the time of submission of nomination paper. He also admitted that contents of letters which he submitted to Election Observer and Chief Election Commissioner were same. He has also contradicted the fact that he did not state that RO/ARO should look into part no. 276. This fact is ex facie incorrect. It is very evident from his own document Ex. P-8 and P-9. No evidence has been produced by election-petitioner to prove that there was any hot exchange of words between him and the RO except of his own statement.

87. On the part of defence, DW-2, Krishna Kumar, has stated that he was present on the date of scrutiny throughout in the room of RO. Neither petitioner came in that Office nor anybody else when his (Election Petitioner's) nomination paper was taken for scrutiny and was rejected in presence of DW-2. In the cross examination, an attempt was made to discredit this witness by proving that he is an interested person but I do not find much substance which has come out in the cross examination so as to discredit the aforesaid witness. His categorical statement given in the examination-in-chief by way of affidavit,

however, appears to be doubtful for the reason that the manner in which scrutiny took place on 6.4.2009, he was not able to say much on the ground that he did not remember and if that is so, it appears doubtful, how he had sworn categorically, that the nomination of election petitioner, when taken for scrutiny, neither he (petitioner) nor anyone on his behalf appeared before RO/ARO and the said nomination was rejected in his (DW-2) presence.

88. DW-3, Choudhary Sayeed Ahmad, is another witness who has stated in examination-in-chief by way of affidavit that after scrutiny, nine nominations were rejected and in respect of all such matters, where nominations were rejected, none had appeared before the authority concerned. Regarding petitioner, it is categorically said that at the time when his nomination was taken up for scrutiny, and, his name was called, none appeared before RO and nomination was rejected in presence of DW-3. In cross examination, however, he has admitted that he was Authorized Representative of the candidate Sri Kapil Muni Karwariya and was present in the room of RO. This witness was an Authorized Representative of returned candidate, whose election is under challenge and it makes him an interested witness. However, the reason of his presence as Authorized Representative has also been doubted by petitioner and during cross examination, it is admitted that the concerned witness has not placed any material on record to show that he was the Authorized Representative justifying his presence at the time of scrutiny in the Room of RO. About time of scrutiny when the nomination of the petitioner was taken up, he admits of having no such knowledge.

89. Be that as it may, the fact remains that petitioner has utterly failed to show that till the time of scrutiny, he himself was well aware about correct details of his Proposers with regard to their place in the electoral roll. According to his own stand, as is evident from record, and discussed above, the Proposers' name must have found mention in electoral roll of Part 275 and there was no error, which he reiterated before Election Observer also.

90. Enough time was given for filing nomination papers. Petitioner filed his nomination paper on the last date and, that too, at the fag end when time of filing nomination paper was going to expire. No advance preparation was made by petitioner to contest election inasmuch position of Proposers in various electoral rolls was also not verified by him, earlier till the last date of nomination, i.e., 4.4.2009, when he submitted nomination. He admitted of having made no attempt to obtain certified copy of electoral roll, to avoid any scope of error with regard to details of Proposers which was to be mentioned in nomination paper.

91. In the entirety of the above facts, I find it very difficult to treat it a deliberate human error. In my view it was a deliberate negligence and non serious attempt on the part

of petitioner in the contest of above election. Not only very casually he has filled in nomination form, but also stressed, what he has mentioned therein is correct. He made no attempt till his nomination was rejected by RO to show or to find out as to what was correct position of Proposers in electoral roll. Subsequently, petitioner has tried to make an improvement but I find this attempt to be of no benefit for the reason that it stood contradicted by the documents, which he admitted to have submitted to Election Observer and Chief Election Commissioner. When a candidate has failed to assist RO and ARO to find out correct position or place of his Proposers in the electoral roll, particularly when electoral roll consists of hundred and thousand names, as already said, RO is not supposed to make a roving and fishing enquiry to find out such information which is to be furnished by the candidate himself. This is the prime responsibility of the candidate. An unintentional human error contemplates that correct information is possessed by the person concerned but he committed unintentional, undesired error while making entry in the document. In such case there must be no doubt about the fact that he possess correct information. Where, however, the incumbent does not possesses correct information at all and has made no attempt to find out correct information, the wrong information he supplied cannot be said to be a result of indeliberate, unintentional error. Here is a case, which in my view, does satisfy requirement of a substantial defect in nomination form and, therefore, it cannot be said that it has been wrongly rejected by RO.

92. There is one legal submission, which is very seriously argued and need be discussed at this stage.

93. Much reliance has been placed by Sri N.K. Pandey, learned counsel appearing for election petitioner on the fact that after filing of nomination, RO administered oath and after having satisfied with the entries made in nomination paper, acknowledgement/receipt was also issued. Relying on sub-section (4) of Section 33 of Act, 1951, it is contended that it was the statutory duty of RO to satisfy himself about the correctness of entries made in nomination paper when it is presented to him and once acknowledgement/receipt was issued to petitioner by RO, having satisfied himself with the requirement of Section 33(4) of Act, 1951, there was no occasion for him to reject nomination paper at the time of scrutiny on the ground that any or more entry(s) in nomination paper is/are incorrect.

94. The submission, in my view, is nothing but a misconstruction of Section 33(4). In fact, it intends to add something which is not there. A careful and indepth reading of Section 33 in its entirety and sub-section (4) in particular, makes it clear that on presentation of nomination paper, RO shall satisfy only about the names and electoral roll of candidate and his proposers entered in the

nomination paper that the same are such as entered in the electoral roll. The proviso to sub-section (4) clarifies by stating that an inaccurate description or misnomer or clerical, technical or printing error in regard to name of candidate or his proposers etc. shall be overlooked and RO shall also permit such misnomer etc. to be corrected. The requirement of Section 33(4) is only, that, if, in the description of person(s) in nomination paper, there is some kind of error which otherwise does not go to the root of the matter, like spelling mistake or printing error etc., the same would be allowed to be corrected or be ignored. It does not contemplate that the details, if wrongly filled in and the same do not tally with the electoral roll, nomination form shall not be admitted or shall be returned or shall be rejected. Broadly, RO would have to see on the date of nomination that nomination paper is filled in all the columns, required to be duly filled under the rules and there is no discrepancy with respect to description or title of the candidate or his proposer(s). However, if correct details of position of a proposer is not provided in the nomination form and the proposer is not found in electoral roll with reference to details mentioned in the nomination paper, the RO has no power under sub-section (4) of Section 33 to ask the candidate to provide correct information and not to accept nomination till correct information is not supplied or to take any such other steps/action. All these things can be done by RO only on the date of scrutiny. Therefore, if RO is not satisfied about correctness of entries made in nomination form, the action he could/would have taken, is only at the time of scrutiny and not earlier thereto. All these stages would have come only at the time of scrutiny and what is required to be seen at the time of scrutiny cannot be read in Section 33(4). Both have to be separated from each other. The mere fact that proviso talks of misnomer, inaccurate description, clerical, technical or printing error makes it very clear that it is not the verification of all the details provided in nomination form which has to be seen at the time of presentation of nomination paper. What is required to be done by RO at the time when Section 36(4) would have its application, this Court cannot read the same so as ought to have been done at the stage of Section 33(4).

95. This argument can be tested from another angle.

96. There may be a case where nomination form contains incorrect details/address with regard to electoral roll information of proposers and if one checks the details from electoral roll, it is quite possible that one may not find those proposers in the electoral roll at the place where it is mentioned as per the information given in nomination form. The RO or ARO while entertaining nomination, when it is presented, may fail to notice this defect either due to failure of their duty as contemplated in Section 33(4) of Act, 1951 or otherwise. In other words, the RO may commit a mistake and accept a nomination form which contains wrong details about the position of

proposers in electoral roll. The candidate may also fail to provide correct information at any stage. Will that failure on the part of RO will make it obligatory upon him to take that nomination correct and not to reject the same on the date of scrutiny when he failed to find the proposer in electoral roll as per the information given in nomination, merely for the reason that on the date when nomination was presented, he did not raise this objection or he is bound to go for a cumbersome scrutiny of entire electoral roll to check, whether proposers' names actually find therein or not. Can the principle of waiver or estoppel would apply in such a case against RO.

97. In my view, the answer would have to be in negative. The verification of entries and consequences are provided under Section 36, which have to be seen at the time of scrutiny. If at the time of scrutiny, RO finds that particulars have been wrongly mentioned in nomination and candidate takes no interest in helping RO to find out correct position, he would be justified in rejection of such nomination.

98. In the present case, the election-petitioner has also failed to prove that he was actually present before RO at the time when his application was taken up for scrutiny so as to avail any opportunity of rectification at that stage. I have already recorded a finding that till the date of scrutiny and up to late in the night, i.e., about 10.30 pm, the petitioner was sure that the names of proposers must be in part No. 275 of electoral roll, and as per his knowledge, there was no error in the nomination. That being so, the subsequent version and improvement in the state of affairs as stood on the date of scrutiny, as tried to assert and prove before this Court, which has been disbelieved, as discussed above, cannot help the petitioner and it cannot be said that RO failed in his duty to give opportunity to petitioner to rectify the error when petitioner himself failed to remain present before RO at the time of scrutiny.

99. In other words, in the present case, petitioner gave a wrong information about part number of electoral roll of five proposers in the nomination paper. He being himself

unaware of correct position, could not give correct information even till the time of scrutiny or when his application was rejected. Except his oral submission that he was present at the time of scrutiny, I do not find any credible evidence on record to show that he was actually present and the incidents which he alleged to have taken place before RO at 2.00 pm on 06.04.2009, did actually occur. His own document which he submitted in the night to Election Observer, in fact, shows otherwise. It is in these facts and circumstances, it cannot be said that mere fact that RO received nomination and issued acknowledgement, that amounts to condonation of serious defect in the nomination, about wrong mention of part number with regard to five proposers. In absence of those proposers' names in the electoral roll, the RO had no option but to reject nomination.

100. From whatever way this Court look into this matter, in my view, this election petition deserve to fail.

101. The above discussion leads to inevitable conclusion that there is no error in the order passed by RO rejecting nomination of election-petitioner. The resultant inference would be that there is no legal or otherwise infirmity in the election in question. The election of respondent-candidate cannot be said to be illegal or otherwise faulty, in any manner.

102. The election petition, therefore, has no merit. Dismissed accordingly with cost which I quantify to Rs. 5,000/- (Rupees five thousand).

Sd./-

Sudhir Agarwal, J.

Dt. 20.12.2013

AK/PS

[No. 82/UP-HP/1/2009 (Alld.)]

By Order,

R. K. SRIVASTAVA, Principal Secy.